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Justices' Montgomery Ruling Doesn't Expand Shipper Liability

By **Ronald Leibman** (June 26, 2026, 5:17 PM EDT)


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What is most surprising about the hailstorm of comments regarding the U.S. Supreme Court's May 14 decision in Montgomery v. Caribe Transport II are certain reactions regarding the potential liability of shippers.

There have been many questions regarding how the Montgomery decision might affect shipper negligent hiring liability claims. The answer is that it changes nothing.

As has been written about ad infinitum, the crux of the Montgomery case was whether brokers could be sued for state negligent hiring claims under the Federal Aviation Administration Authorization Act's safety exception. The FAAAA otherwise acts as a broad preemption of state oversight of motor carriers and brokers.

The court, in largely plain language and on a 9-0 basis said yes, brokers can be sued. Argue as one might as to the correctness of this decision, and how it might ultimately affect carriage capacity and freight and insurance rates, the case did not deal with shipper liability, and likely could not, since the FAAAA by its own terms applies only to motor carriers and brokers — though, admittedly, this issue has been raised in the past.

The fact is that shippers could always be, and in the past have been, named in suits claiming they were responsible for personal injury claims relating to trucking accidents for various reasons, whether contracting for services through a broker or directly with a carrier.

However, such claims remain a tough row to hoe for plaintiffs, who must overcome substantial proximate cause and evidentiary hurdles.

One example of such a matter involving a hired broker was a case decided by the U.S. Court of Appeals for the Ninth Circuit in 2020: Miller v. C.H. Robinson Worldwide. In this case, Costco Wholesale Corp. was a named defendant, only to be released.

In a more recent case questioning direct shipper liability, on May 15, the Texas Supreme Court, in In re: Home Depot U.S.A. Inc., dismissed a claim against defendant shipper Home Depot. Justice John Phillip Devine stated that the claim was "not viable because it transforms the commonplace act of shipping goods into a basis for sweeping tort liability untethered from control, conduct, and risk."

In sum, liability will not attach to a passive shipper, who — as in the Home Depot case — does not own

the truck or employ or supervise the driver, or otherwise create any special hazard in regard to the cargo.

In contrast, the court did make clear that liability may exist where the harm claimed is caused by a direct act of the shipper — e.g., improper loading.

Despite the hurdles to success in front of plaintiffs, it can be expected that shippers, particularly large shippers, are targets, or should be prepared to defend themselves. In fact, many large shippers have been prepared to do so for decades.

This has certainly been the case at least since the seminal 2004 case Schramm v. Foster, in which the U.S. District Court for the District of Maryland found that brokers can be held liable for failing to exercise reasonable care in vetting and selecting carriers.

Many of my shipper clients have developed contractual due diligence requirements and underlying carrier operations standards for brokers to utilize as a part of their carrier vetting processes. These include, for example:

- Prohibiting double brokering, and the use of carriers with 24-month out-of-service scores exceeding national averages;
- Prohibiting the use of carriers that are in Federal Motor Carrier Safety Administration alert status;
- Mandating that brokers arranging transportation services and their carriers meet reasonable insurance standards, and verifying that such standards are met;
- Requiring that brokers and carriers hold indemnification obligations to the shipper for third-party claims; and
- Ensuring that all carriers hold a satisfactory safety rating from the U.S. Department of Transportation.

These standards effectively set at least a floor of reasonability should a negligent hiring claim arise.

Another modern strategy is the use of online carrier vetting and data collection services, not as the sole arbiter, but as one tool in a broader decision-making protocol.

In addition, shippers often maintain their own internal systems and criteria for verifying broker capabilities, which may include the review of available FMCSA demographic data, financial due diligence and web searches.

Similarly, when directly contracting with a carrier, sophisticated shippers generally have developed their own due diligence criteria and standards for contracted carriers, sometimes exceeding the standards utilized by even the largest brokers, in response both to potential claims and as a means to obtaining quality carriers.

In addition, whether contracting through brokers or directly with carriers, knowledgeable shippers typically insist the relationship be properly papered and include reasonable insurance requirements and indemnification provisions to the extent permitted under applicable state law.

These may include review of available FMCSA demographic, safety and compliance data and carrier financials, obtaining broad contractual indemnification, and setting insurance standards as to types and kinds of coverage and coverage amounts.

Shippers may also require additional insured status on liability policies and loss payee status on property policies, and verify that these requirements are met by obtaining original proofs of insurance from the carriers' insurance broker or insurer at the time of onboarding, and thereafter on a periodic basis.

It is without question that in their use of brokers or carriers to move their goods, shippers — particularly large shippers — have been and likely will remain potential defendants in negligent hiring cases where a carrier utilized for one of their shipments is involved in an accident that causes personal injury.

However, as stated above, this possibility was there long before the Montgomery case, and was not affected by the verdict in that case.

Whether we see an increase in claims against shippers being brought is anyone's guess, but if that were to occur, Montgomery will not be the sole underlying cause. Regardless, based on past history, shippers should be prepared to defend themselves.

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